

FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

2017 FEB 24 AM 11:26

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

IN RELATION OF STATE OF OHIO
DEVIN BRANCH, *et al.*,

Petitioners,

v.

CHRISTOPHER PITTS, *et al.*,

Respondents-,
Third-Party Petitioners

v.

NATHANIEL MARTIN
15106 Euclid Avenue, Apt. #4
East Cleveland, OH 44112

Individually, and in his official
capacity as City Councilor at Large for the
City of East Cleveland, Ohio

and,

BARBARA J. THOMAS
1169 Carlyon
East Cleveland, Ohio 44112

Individually, and in her official
capacity as City Councilor for Ward 2
for the City of East Cleveland, Ohio

Third-Party Defendants.

) CASE NO.:

) **1 17 CV 0385**

) **JUDGE GAUGHAN**

) THIRD PARTY COMPLAINT
) ON BEHALF OF RESPONDENTS/
) THIRD-PARTY PETITIONERS

) JURY DEMAND ENDORSED
) HEREON

INTRODUCTION

This Third-Party Complaint arises from an original petition for a Writ of Quo Warranto filed in the Ohio Eighth District Court of Appeals made by three individuals who thereby allege

that they were ‘appointed’ by two of three City of East Cleveland Councilors. The purported appointments were attempts to fill two City Council vacancies that resulted from the recall of the City’s Mayor and City Council President. Petitioner Devin Branch was supposed to fill the ‘Councilor at Large’ vacancy and Petitioner Kelvin Erby that of the “Ward 3 Council’ vacancy. Tracy Udrija-Peters alleged in the petition that she was appointed to fill the Clerk of Council position. That position vacancy was supposed to have come about when Third Party Defendants Nathaniel Martin, the second City Councilor at Large and Barbara J. Thomas, City Councilor for Ward 2, *sua sponte* fired Dr. Khadijah Guy, the current Clerk of Council.

The Third-Party Respondents’ illegal and coercive actions in making these pseudo appointments were perverse, invidious violations of the City’s Charter and Codified Ordinances.

And, as supported hereinafter the Third-Party Respondents’ deliberate indifference evidencing malicious purpose, bad faith, or wanton or reckless conduct in violation of the U.S. and state of Ohio Constitutions as well as various federal and state laws require the conclusion that Respondents/Third-Party Petitioners are entitled to indemnification or contribution for all damages that may be assessed as well as the prohibition and denial of their illegal appointment actions.

PARTIES

1. Third-Party Petitioners state that after repeated nefarious efforts by Third-Party Defendants to defy the City of East Cleveland Charter and appoint pretenders to two City Council vacancies as well as a fraudulent City Council Clerk, the newly installed Mayor followed local and state law to appoint Christopher Pitts as City Councilor at Large, Ernest Smith as Councilor for Ward 3; and, retain Dr. Khadijah Guy as the rightful Clerk of Council.

2. Third-Party Defendant Nathaniel Martin, while acting under color of law, was serving as City Councilor at Large; and, at all times relevant hereto, was acting under color of law and either operating within the course and scope of such employment with the East Cleveland City Council and/or was acting in his individual capacity.

3. Third-Party Defendant Barbara J. Thomas, while acting under color of law, was serving as City Councilor for Ward 2; and, at all times relevant hereto, was acting under color of law and either operating within the course and scope of her employment with the City of East Cleveland City Council and/or was acting in her individual capacity.

FACTS

4. Third-Party Petitioners followed the East Cleveland City Charter and the Ohio Revised Code in recognizing that the appointments made and retained by Mayor Brandon L. King including those of Ward 3 Councilor Ernest Smith, Councilor at Large Ernest Smith and City Council Clerk, Dr. Khadijah Guy were legitimate

5. At all times relevant hereto, all acts of failures to act occurred in the City of East Cleveland, County of Cuyahoga and State of Ohio while Third-Party Respondents Nathaniel Martin and Barbara J. Thomas were acting under color of law; either in their official capacities and/or in their individual capacities in order to force their choices contrary to law and equity onto City Council.

6. On December 19, 2016, the Cuyahoga County Board of elections certified that Mayor Gary A. Norton, Jr. and City Council President Thomas J. Wheeler were recalled thereby creating two Council vacancies. As a consequence certain of the East Cleveland City Charter Provisions were provided to City Council on December 20, 2016 in a Legal Opinion of that same date which outlined the procedure for filling of City Council vacancies.

7. Pursuant to those instructions, City Councilors Nathan Martin and Barbara Thomas pretended to advertise for Council Replacement candidates and set December 29, 2016 as the date to interview the resulting 15 applicants. The Agenda for the December 29, 2016 meeting was the following:

**CALL TO ORDER
ROLL CALL
REMARKS ON AGENDA ITEMS ONLY (TWO MINUTES)
REPORTS AND ANNOUNCEMENTS FROM THE MAYOR
DISMISS COMMUNITY FOR EXECUTIVE SESSION
CITY COUNCIL CANDIDATE INTERVIEWS
RECONVENE MEETING**

**RESPONSE OF COUNCIL AND MAYOR TO REMARKS OF THE
PUBLIC
ADJOURNMENT**

**THIS MEETING IS OPEN TO THE PUBLIC BY:
COUNCIL PRESIDENT NATHANIEL MARTIN**

Each person was unceremoniously interviewed for two to three minutes. Further, in the notice of that meeting, City Councilor Nathaniel Martin thus self-declared himself to be Council President prior to 1) Selection of Council Replacements; 2) 24 Hour Notice of and the holding of an Organizational Meeting called and chaired by the Mayor, 3) An Election of the Council President and Council Vice President pursuant to Section 111.01 of the East Cleveland City Charter in a clear disregard of same in order to forcibly appoint the predetermined persons of the choice of himself and Barbara J. Thomas, Devin Branch and Kelvin Erby.

8. Due to their conspiratorial objective, there is no evidence in the December 29, 2016 meeting that Councilors Nathaniel Martin and Barbara J. Thomas ever had a vote on the two 'replacement' councilors in an open meeting as required by City Charter section 103.01 or state law.

9. In subsequent communications, Councilors Nathaniel Martin and Barbara J. Thomas alternatively referred to themselves as Council President and Vice-President or Councilor at Large and Vice President evidencing a clear confusion, ambiguity and lack of organization required to legitimately have an election required to actually hold the former positions and/or lawfully appoint a Clerk of Council let alone fill Council vacancies.

10. This state of suspended non-action continued beyond the thirty days acceptable to public policy such that state code sections RC 731.43 and RC 733.31, respectively authorizing the Mayor to make the legislative appointments whereby he did so in appointing Christopher Pitts, Councilor at Large; Ernest Pitts, Councilor for Ward 3 and retaining Dr. Khadijah Guy as Clerk of City Council

COUNT I

42 U.S. Code §1985 Conspiracy to Interfere with Civil Rights

11. Councilor Nathaniel Martin, individually and acting under color of law in his capacity as East Cleveland City Councilor with Councilor Barbara J Thomas in the City of East Cleveland, state of Ohio, conspired to prevent by force, intimidation or threat, Christopher Pitts, Ernest Smith and Dr. Khadijah Guy from holding a office, trust or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, were his duties as an officer are required to be performed.

12. Councilor ,Barbara J. Thomas, individually and acting under color of law in his capacity as East Cleveland City Councilor with Councilor Nathaniel Martin in the City of East Cleveland, state of Ohio, conspired to prevent by force, intimidation or threat, Christopher Pitts, Ernest Smith and Dr. Khadijah Guy from holding a office, trust or place of confidence under the

United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, were his duties as an officer are required to be performed.

13. Councilor Nathaniel Martin, individually and acting under color of law in his capacity as East Cleveland City Councilor with Councilor Barbara J Thomas in the City of East Cleveland, state of Ohio, conspired to prevent by force, intimidation or threat, Brandon L. King, Joie Graham, Willa Hemmons and Belinda Kyle from holding a office, trust or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, were his duties as an officer are required to be performed.

14. Councilor ,Barbara J. Thomas, individually and acting under color of law in his capacity as East Cleveland City Councilor with Councilor Nathaniel Martin in the City of East Cleveland, state of Ohio, conspired to prevent by force, intimidation or threat, Brandon L. King, Joie Graham, Willa Hemmons and Belinda Kyle from holding a office, trust or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, were his duties as an officer are required to be performed.

COUNT II

42 U.S. Code § 1983

Civil Action for Deprivation of Rights

15. Councilor Nathaniel Martin, individually and acting under color of law in his capacity as East Cleveland City Councilor, subjected or caused to be subjected Christopher Pitts, Ernest Smith and Dr. Khadijah Guy within the jurisdiction thereof to the deprivation of their rights, privileges, or immunities secured by the Constitution and laws and is liable to said injured parties.

16. Councilor Barbara J. Thomas, individually and acting under color of law in her capacity as East Cleveland City Councilor, subjected or caused to be subjected Christopher Pitts, Ernest Smith and Dr. Khadijah Guy within the jurisdiction thereof to the deprivation of their rights, privileges, or immunities secured by the Constitution and laws and is liable to said injured parties.

17. Councilor Nathaniel Martin, individually and acting under color of law in his capacity as East Cleveland City Councilor, subjected or caused to be subjected Brandon L. King, Joie Graham, Willa Hemmons and Belinda Kyle within the jurisdiction thereof to the deprivation of their rights, privileges, or immunities secured by the Constitution and laws and is liable to said injured parties.

18. Councilor Barbara J. Thomas, individually and acting under color of law in her capacity as East Cleveland City Councilor, subjected or caused to be subjected Brandon L. King, Joie Graham, Willa Hemmons and Belinda Kyle within the jurisdiction thereof to the deprivation of their rights, privileges, or immunities secured by the Constitution and laws and is liable to said injured parties.

COUNT III

First and 14th Amendment to the U.S. Constitution

19. Councilor Nathaniel Martin, individually and acting under color of law in his official capacity as East Cleveland City Councilor violated Respondents/Third-Party Petitioners' First and Fourteenth Amendment rights to be, act and/or serve in their respective positions as public officials in the City of East Cleveland, Ohio.

20. Councilor Barbara Thomas, individually and acting under color of law in her official capacity as East Cleveland City Councilor violated Respondents/Third-Party Petitioners' First Amendment and Fourteenth rights to be, act and/or serve in their respective positions as public officials in the City of East Cleveland, Ohio.

COUNT IV

Sixth and Fourteenth Amendment of the U.S. Constitution

21. Councilor Nathaniel Martin, individually and acting under color of law in his official capacity as East Cleveland City Councilor violated Respondents/Third-Party Petitioners' Sixth and Fourteenth Amendment rights to due process by depriving them of their ability or inhibiting their ability to carry out their official duties as public servants.

22. Councilor Barbara Thomas, individually and acting under color of law in her official capacity as East Cleveland City Councilor violated Respondents/Third-Party Petitioners' Sixth and Fourteenth Amendment rights to due process by depriving them of their ability or inhibiting their ability to carry out their official duties as public servants.

WHEREFORE AND BY REASON OF THE FOREGOING, Third-Party Petitioners hereby demand judgment jointly and severally against Third-Party Respondents Nathaniel Martin and Barbara J. Thomas individually, and in their official capacities as members of the

East Cleveland City Council for all sums that may be adjudged against the Third-Party Petitioners, as Respondents, in favor of Petitioners, together with all costs incidental to the defense of the principal suit, preservation of the positions of Councilor at Large Christopher Pitts, Ward 3 Councilor Ernest Pitts and City Council Clerk Dr. Khadijah Guy and for further relief as this Court deems just and equitable.

Respectfully submitted,

CITY OF EAST CLEVELAND



/s/ Willa M. Hemmons

Willa M. Hemmons (0041790)

Director of Law

14340 Euclid Avenue

East Cleveland, Ohio 44112

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Attorney for Respondents/Third-Party Petitioners

Council President Joie Graham

Council Vice President Christopher Pitts

Councilor Christopher Pitts

Clerk of Council Dr. Khadija Guy

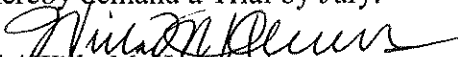
Mayor Brandon L King

Law Director Willa Hemmons

Human Resource Director Belinda Kyle

JURY DEMAND

Respondents/Third-Party Petitioners hereby demand a Trial by Jury.


/s/ Willa M. Hemmons

Willa M. Hemmons (0041790)

Director of Law

Attorney for Respondents/Third-Party Petitioners

Council President Joie Graham

Council Vice President Christopher Pitts

Councilor Christopher Pitts

Clerk of Council Dr. Khadija Guy

Mayor Brandon L King

Law Director Willa Hemmons

Human Resource Director Belinda Kyle

CERTIFICATE OF SERVICE

The undersigned attorney of record hereby certifies that on this 24th day of February, 2017, a true and accurate copy of the foregoing *Third-Party Complaint on Behalf of Respondents* was filed by hand delivery with this Court and it is further certified that a service copy of this filing has been mailed via regular U.S. mail postage prepaid to:


Nathaniel Martin
15106 Euclid Avenue, Apt. #4
East Cleveland, OH 44112

Barbara J. Thomas
1169 Carlyon
East Cleveland, Ohio 44112

and, Counselors for Relators, Devin Branch, Kelvin Earby and Tracy Peters:

Darryl Pittman, Esq.
2490 Lee Road, Suite 115
Cleveland, Ohio 44118

Robert Smith, Esq.,
3751 Prospect Avenue, East 3d Flr.
Cleveland, Ohio 44115


/s/ Willa M. Hemmons
Willa M. Hemmons (0041790)
Director of Law

Attorney for Respondents/Third-Party Petitioners
Council President Joie Graham
Council Vice President Christopher Pitts
Councilor Christopher Pitts
Clerk of Council Dr. Khadija Guy
Mayor Brandon L King
Law Director Willa Hemmons
Human Resource Director Belinda Kyle